IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5562 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASUDEV M KSHTRIYA

Versus

DIVISIONAL MANAGER

Appearance:

Mr Namrata Patel for MR RK MISHRA for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/09/2000

ORAL JUDGEMENT

The petitioner above named has challenged the award passed by the Central Industrial Tribunal on 21.2.1992 in Reference (I.T.C) No.12/90, under which the learned Tribunal was pleased to hold that the action of

the respondent in terminating the services of the petitioner was bonafide one. However, the learned tribunal declined to grant relief to the petitioner for reinstatement in service. At the same time the tribunal directed the respondent to pay compensation of Rs.10,000/- within one month from the date of the said order. The tribunal did not pass any order with respect to the cost of the said proceedings. The petitioner has contended before this Court that the petitioner was appointed in the respondent company on 1.1.1980 and has served as such and used to render various types of jobs which came to be shown by the officials of the said company. That his services were terminated w.e.f.1.12.1986. That he was supposed to open the office at 9.30 a.m. and was closing the same at 5.30 p.m. That even during the entire office hours from 9.30 a.m. to 5.30 p.m. he used to do the cleaning of the office, serving water to staff members, carrying the files from one table to another. That he was paid salary at the rate of Rs.150/- p.m. and he also used to get Rs.25/per week. Therefore, in all he was getting Rs.250/- p.m. At page 3 of the petition, it is mentioned that the petitioner was being paid on daily rated basis. The petitioner also states that his services were terminated w.e.f. 1.12.1986. He preferred reference No.12/90 which was disposed of by the tribunal as aforesaid. Feeling aggrieved by the said judgment and award of the tribunal, the petitioner had preferred this petition before this court. It has been mainly contended here that the petitioner had a long service of six years without any break and the respondent has not followed the procedure contained in Section 20(F) of the Industrial Disputes Act, 1947. That no notice was served upon the petitioner showing the termination of the service. That no salary in lieu of the notice was paid and even allowance was also not paid to the petitioner. Therefore, the order of termination of service is illegal and that aspect has not been properly considered by the tribunal. That the tribunal has committed serious illegality in not granting reinstatement to the petitioner on the original post in the employment of the respondent. Even otherwise the orders of the learned tribunal are illegal, erroneous and deserve to be set aside. The petitioner has prayed for appropriate writ, order or direction for quashing and setting aside the award dated 21.2.1992 of the learned tribunal which is placed at Annexure 'A'. The petitioner has further prayed to direct reinstatement of the petitioner with full backwages in the employment of the respondent with costs of the petition.

2. In this petition, rule was issued and the

respondent has put in appearance in response to the service of rule. However, no affidavit appears to have been filed on behalf of the respondent. I have heard Mr Shaikh for Ms.Namrata Patel for the petitioner and Mr R H Mehta, learned Advocate for the respondent and have perused the papers. It has been extensively argued on behalf of the petitioner that the respondent has not followed the procedure laid down in Section 25(F) of the Industrial Disputes Act, 1947 and therefore, reinstatement was not ordered but an award of compensation of Rs.10,000/- was made which does not meet with the requirement of law and, therefore, the orders of the tribunal are ex-facie illegal.

3. On this aspect, it would be worthwhile to consider a decision of the Apex Court in the case of Mohd. Yunus v. Mohd.Mustak, reported in AIR 1984 SC 38. There, the Supreme Court has observed in page 7 which is as under:

> "The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, an error of law much less, an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercise of the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision".

It is, therefore, clear that so far as the present petition is concerned, it is neither an appeal nor a revision. The petitioner has sought exercise of extra ordinary powers of this court and while sitting to exercise this jurisdiction, since there is no appeal or revision, the powers of this court would be very limited and as observed in the aforesaid decision in exercising supervisory powers under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court or Tribunal or it will not review evidence on which

decision of the tribunal purports to be based or to correct errors of law in the decision. I am of the view that looking to the aforesaid decision of the Supreme Court, it is extremely difficult for this court to substitute the views and findings of this court in place of the findings of the tribunal.

4. Even otherwise, it can be gathered that the petitioner himself has stated in para 3 of the petition that he was paid on daily rated basis. This shows that he was not a regular employee of the respondent. He was not regularly appointed on the post on which he worked. He was not on regular or full time post. It appears to be a fact that he was a part-timer and the evidence which has been discussed by the tribunal shows that the petitioner was working on part-time basis. It is to be considered that the finding of fact recorded by the tribunal at page 15, para 10 is that eligibility for appointment as peon in the employment of respondent was that the candidate must have passed 8th standard and as per the finding of fact recorded by the tribunal, the petitioner had also not cleared 7th standard and, therefore, even at the initial stage of appointment, the petitioner was not qualified or eligible for being appointed as peon in class IV service of the respondent. The tribunal has also considered the fact that the petitioner was not appointed in the regular manner in accordance with the recruitment rules. It is a matter of record that the petitioner was related to some officer or employee of the respondent on account of which he was appointed. It is more so when the tribunal has further recorded that the petitioner was not physically and mentally fit for being appointed in the employment. This shows that grace was shown to him for being appointed on part-time basis. In that view of the matter also, it was not a regular appointment and it was without any advertisement or other procedure. When this fact was noticed by the respondent, the respondent terminated the services of the petitioner stating that such appointment was a back-door entry which was impermissible in view of the decision of various courts including the decision of the Supreme Court. The tribunal has also recorded finding of fact that the petitioner was appointed on daily rated basis for cleaning the office and for attending to the job work. Therefore, as soon as the job work is over and the contract expired, there was no necessity ex-facie to terminate appointment after issuing notice of one month. In that view of the matter, I am of the view that the tribunal has shown grace to the petitioner by allowing compensation of Rs.10,000/- and a statement has also been made by the respondent that the

amount of Rs.10,000/- has already been paid to the petitioner. Under the circumstances, I am of the view that this is not a fit case wherein this court should exercise extraordinary power and jurisdiction under Article 227 of the Constitution for quashing and setting aside the orders of the tribunal. In that view of the matter, this petition is without any merit and deserves to be dismissed. This petition is, therefore, ordered to be dismissed. Rule discharged. No order as to costs.

1.9.2000 [D P Buch, J.]
msp.